IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7441 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAMANJI SARDARJI THAKORE

Versus

BHARTIYA AROGYANIDHI SANITORIUM

Appearance:

1. Special Civil Application No. 7441 of 2001

MR DS VASAVADA for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/03/2002

ORAL JUDGEMENT

This petition styled as a petition under Article 226 and 227 of the Constitution of India, in reality challenges the order of the Labour Court, Kalol in Reference (LCA) No.38/84, whereby, the reference of the

petitioner workman was rejected as premature.

2. After recording and appreciating the evidence, a finding of fact is reached that the petitioner was firstly discharged from service on 15.3.1983 and during the process of conciliation, he was reinstated and also paid the backwages. Thereafter, on or around 20th Sept. 1983, the services of the petitioner appeared to have been ended by a resignation, which the petitioner claimed to be under coercion. The dispute between the parties was however alleged to have been referred on the basis of the first date of termination dated 15.3.1983 and the petitioner himself agitated a case of illegal termination with effect from 15.3.1983. Thus, subsequent termination by way of alleged resignation on 20th Sept. 1983 was contended to be not the subject matter of the dispute. However, on the basis of the evidence on record, the Labour Court has also found in the impugned award that the signature on the resignation as well as the payment of compensation were admitted by the petitioner himself and hence, in no case the petitioner was entitled to reinstatement or any other relief. Even then the reference was rejected as premature, as the termination on the subsequent date was not under challenge according to the statement of claim of the petitioner.

3. Learned Counsel Mr. Vasavda contended that the subsequent termination being not the subject matter of dispute, the Labour Court ought not to have gone into the merits of the contentions of parties in that regard. It is however, clear that the terms of reference do not indicate any date of termination. Therefore, there is no substance in the submission of Mr. Vasavda.

4. On the other hand, learned Counsel Mr. K.V. Gadhia, relying upon the Division Bench judgement of this Court in Special Civil Application No. 8708/92 dated 23.12.1992, submtited that the Labour Court was right in holding that validity and legality of the subsequent termination need not have been gone into since it would be open to the petitioner to raise a dispute with respect to the dispute about subsequent termination and get the same decided before the appropriate forum.

5. Without entering into the merits of the rival submissions as regards second round of litigation by a fresh reference, it is observed that the Labour Court has decided the dispute in the case without transgressing its jurisdiction and in any case, the petitioner was not entitled to reinstatement or any other relief in the facts and circumstances of the present case. There is no

error much less an error apparent on the face of the record requiring interference of this Court in its writ jurisdiction. The petition is therefore, dismissed and notice is discharged with no order as to costs.

(D.H.Waghela,J.)

*/Mohandas